IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.42 of 2007

1. Badri Prasad Choudhary , S/0- Late Dwarika Prasad Choudhary

2. Arun Kumar Choudhary, S/0.- Sri Badri Prasad Choudhary.

3.Deepak Kumar Choudhary, S/0- Sri Badri Prasad Choudhary, appellant no. 1` to 3

all are resident of Village- Chakia Bazar Chakia, Sahebganj Road, P.O.- Bara Chakia, P.S. and Anchal Chakia, Distt.- East Champaran, present residing at Behaat Tola, Nawatola, P. O. and P.S. Jhanjharpur, Railway Station P.S. Madhepura, Distt.- Darbhanga, present Distt-Madhubani. ……Appellants

Versus

1.Shovendra Kumar Yadav @ Shovendra Prasad Yadav , S/0- Late Chandan Prasad Yadav.

2. Smit. Sarswati Devi, W/0- Sri Shovendra Kumar Yadav

3. Rajesh Kumar Yadav S/0- Sri Shovendra Kumar Yadav.

All are the residents of Village Sishya Barhi, P.O. & P.S. Phulparas, Distt.- Madhubani, present address at Village- Behat Purani Pokhari, Sony Takies, Jhanjharpur, P.O. & P.S.- Jhanjharpur, Railway Station, Distt.- Madhubani.

4. Smt. Baby Anand Das W/0- Sri Uday Raj Anand and D/0. Shovendra Kumar Yadav. Village- Sunder Birajit, P.O.- Sunder, P.S. Madhopur, Distt.- Madhubani.

5. Satyanarain Mishra, S/0- Late Phulchand Mishra, Vill- Bare Chakia Bazar, Chakia Kesria Road, P.O.- Barachakia, P.S.- Chakia, Distt.- East Champaran.

……..Respondents

Advocate for the Appellants- 1. Mr. S.S. Dwedi, Sr. Advocate
2. Mr. Gopesh Jee, Advocate

Advocate for the respondents- 1. Mr. Birendra Prasad Verma, Sr. Adv.
2. Mr. Yogendra Kumar, Adv.
3. Mr. Dr. M.K. Gautam, Adv.
4. Mr. Ram Naresh Roy, Adv.
5. Mr. Manish Kumar, Adv.

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13/ 01.10.2008 The order under challenge is dated 18.12.2006 passed by Sub-Judge-II, Jhanjharpur in Title Suit No. 40 of 2004, whereby the learned court below has dismissed the petition filed under Order 39 Rule 1 and 2 read with Section 151 of the CPC., of the plaintiffs-appellants, praying therein to restrain the defendants from dispossessing him from schedule 3 land of the plaint and also from making any further construction, repairing, subletting,

changing the present physical feature of the suit land and also from running cinema in the said campus till the disposal of the suit.

Heard learned counsel for the appellants and learned counsel for the respondents.

A detail order running into 18 pages could be said to have been passed by the court below on consideration of several factors and documents which is also large number of documents.

Plea of benami transaction and thereby ownership in respect of sale of properties which are also subject matter of dispute by the defendant IInd set in favour of defendant Ist set has also been discussed. But for the present without examining such aspect and merit of the case which may ultimately prejudice the court below in deciding the case it would be relevant to mention that the learned counsel for the respondents has submitted that so far schedule 4 properties is concerned it has been admitted by the learned counsel for the respondents that it is for the present in possession of defendant Ist set so it shall remain in possession and nobody will disturb their possession.

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So far property of Schedule 3 is concerned both parties claim their respective possession. Nobody will disturb possession of either of the parties and in this respect the court below may appoint a survey knowing pleader commissioner with the consent of both sides, whose report shall be final and shall not be under challenge in the court below itself.

So far Schedule 4 properties are concerned it should

be made clear that save and except necessary repair and plaster, etc., so as to keep and preserve intact, there shall not be any structural change.

The plea of ostensible ownership/benami transaction and ownership, title etc., shall remain open for decision by the court below without being influenced by this order.

This Misc. Appeal thus, stands disposed of with a direction to the court below to dispose of the suit preferably within shortest possible time by avoiding all sorts of adjournment and both sides should render their due assistance for early disposal of the suit.

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(Subash Chandra Jha, J.)

Sanjeet